

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3 \* \* \*

4 JARRETT A. MILLER,

5 Plaintiff,

6 v.

7 JAMES DZURENDA et al.,

8 Defendants.  
9

Case No. 2:18-cv-00264-JCM-NJK

ORDER

10  
11 This action is a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by  
12 a former state prisoner. On February 7, 2019, this court issued an order denying the  
13 application to proceed *in forma pauperis* for prisoners as moot because plaintiff was no  
14 longer incarcerated. (ECF No. 8 at 8). The court ordered plaintiff to file a fully complete  
15 application to proceed *in forma pauperis* for non-prisoners or pay the full filing fee of  
16 \$400.00 within thirty (30) days from the date of that order. (*Id.*) The thirty-day period has  
17 now expired, and plaintiff has not filed an application to proceed *in forma pauperis* for  
18 non-prisoners, paid the full filing fee, or otherwise responded to the court's order.  
19 Moreover, plaintiff has not filed an updated address with this court. (See ECF No. 13).

20 District courts have the inherent power to control their dockets and "[i]n the  
21 exercise of that power, they may impose sanctions including, where appropriate . . .  
22 dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831  
23 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure  
24 to prosecute an action, failure to obey a court order, or failure to comply with local rules.  
25 See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance  
26 with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal  
27 for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856  
28 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring

1 *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833  
2 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); *Henderson*  
3 *v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and  
4 failure to comply with local rules).

5 In determining whether to dismiss an action for lack of prosecution, failure to obey  
6 a court order, or failure to comply with local rules, the court must consider several factors:  
7 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to  
8 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring  
9 disposition of cases on their merits; and (5) the availability of less drastic alternatives.  
10 *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130;  
11 *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

12 In the instant case, the court finds that the first two factors, the public's interest in  
13 expeditiously resolving this litigation and the court's interest in managing the docket,  
14 weigh in favor of dismissal. The third factor, risk of prejudice to defendants, also weighs  
15 in favor of dismissal, since a presumption of injury arises from the occurrence of  
16 unreasonable delay in filing a pleading ordered by the court or prosecuting an action. See  
17 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor – public policy  
18 favoring disposition of cases on their merits – is greatly outweighed by the factors in favor  
19 of dismissal discussed herein. Finally, a court's warning to a party that his failure to obey  
20 the court's order will result in dismissal satisfies the "consideration of alternatives"  
21 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779  
22 F.2d at 1424. The court's order requiring plaintiff to file an application to proceed *in forma*  
23 *pauperis* for non-prisoners or pay the full filing fee within thirty (30) days expressly stated:  
24 "IT IS FURTHER ORDERED that, if [p]laintiff fails to timely comply with this order, the  
25 court shall dismiss this case without prejudice." (ECF No. 8 at 8). Thus, plaintiff had  
26 adequate warning that dismissal would result from his noncompliance with the court's  
27 order to file an application to proceed *in forma pauperis* for non-prisoners or pay the full  
28 filing fee within thirty (30) days.

It is therefore ordered that this action is dismissed without prejudice based on plaintiff's failure to file an application to proceed *in forma pauperis* for non-prisoners or pay the full filing fee in compliance with this court's February 7, 2019, order.

It is further ordered that the clerk of court shall enter judgment accordingly.

DATED THIS 19<sup>th</sup> day of April 2019.

James C. Mahan  
UNITED STATES DISTRICT JUDGE